
(1989) 09 MAD CK 0006
In the Madras High Court

Special Thasildar-15, Land Acquisition	APPELLANT
Vs	
P.R. Govindarajalu	RESPONDENT

Date of Decision : 08-09-1989

Acts Referred:

Land Acquisition Act, 1894 — Section 54

Citation : (1989) 2 MLJ 402

Hon'ble Judges : Ratnam, J

Bench : Division Bench

Judgement

Ratnam, J.—These appeals, u/s 54 of the Land Acquisition Act, 1894 hereinafter referred to as "the Act", have been preferred by the

Special Tahsildar No. 15, Land Acquisition, Neyveli-2, against the order passed by the Sub-Court, Cuddalore, in LA.O.P. Nos. 113 and 112 of

1983, on references made to that court u/s 18 of the Act

2. Briefly stated, the circumstances giving rise to these appeals are as under: For the purpose of second mine cut project of Neyveli Lignite

Corporation Ltd., ("N.L.C." for short), large extents of land in Vadakkuvellur village Vridhachalam taluk, were acquired under the provisions of

the Act. Amongst the lands so acquired, the respondent in these appeals was the owner of the following:

Appeal No. 996 of 1985:

S. No. Survey No. Classification Extent

1. 308/7 Wet 0.15.0

2. 308/8 "" 0.33.5

3. 308/9 "" 0.25.0

4. 308/10 "" 0.24.5

5. 308/11 "" 0.11.5

6. 308/12 "" 0.05.0

7. 308/13 "" 0.41.5

8. 308/14 "" 0.14.0

9. 308/15 "" 0.14.0

Appeal No. 997 of 1985:

S. No. Survey No. Classification Extent

1. 301/2 Wet 0.16.5

2. 301/3 "" 0.13.0

3. 301/4 "" 0.14.0

4. 301/5 "" 0.24.0

5. 301/6 "" 0.30.0

6. 301/7 "" 0.14.0

7. 302/7 "" 0.22.0

The notification u/s 4(1) of the Act was published on 11-11-1978. In the course of the award enquiry, the respondent in these appeals put forth

the claim that in respect of the required lands, compensation should be awarded at the rate of Rs. 25,000 per acre. However, on a consideration

of the instances of angles in the vicinity of the acquired lands, the Land Acquisition Officer, by his award Nos. 2 and 1 of 1979 dated 29-9-1979

and 7-9-1979 respectively, determined the compensation payable in respect of the lands acquired from the respondent in these appeals at Rs.

7,000 per acre or Rs. 17,290 per hectare. In doing so, the Land Acquisition Officer relied upon in both the awards on instance of sale dated 10-

2-1977 relating to an extent of 1.75 acres in survey No. 327/1 for Rs. 12,250,. Not satisfied with this, the respondent herein sought for and

obtained references u/s 18 of the Act in LA.O.P, Nos. 113 and 112 of 1983, Sub Court, Cuddalore, and on a consideration of the oral as well as

the documentary evidence, the court determined the compensation payable in respect of the lands acquired from the respondent at the rate of Rs.

65,000 per acre, besides solatium at 30% and interest at 9% p.a. as per the provisions of the Land Acquisition (Amendment) Act 68 of 1984. It is

the correctness of the award of compensation in this manner that is questioned by the Special Tahsildar No. 15, Land Acquisition, Neyveli - 2 in

these appeals.

3. It would be appropriate at this stage to make abrief reference to the circumstances under which N.L.C. has come forward with the petition in

C.M.P. Nos. 16467 and 16469 of 1985 under Order 1, Rule 10(2), C.P.C. praying that it should be impleaded as a party to these appeals. In the

affidavits filed in support at these petitions, N.L.C. has stated that the burden of payment of compensation amounts is to be borne it and that as per

the awards in Award Nos. 2 and 1 of 1979 respectively pertaining to these appeals, compensation had been fixed at Rs. 7,000 per acre and

further that dissatisfied with the quantum of compensation as fixed, the respondent in these appeals had earlier sought references u/s 48 of the Act

in O.P. Nos. 213 and 178 of 1980 before the Sub Court Chidambaram, which were later transferred to the Sub Court, Vridhachalam, as

O.P.Nos. 149 and 121 of 1981, which were closed on 15-6-1981 and 14-7-1981 respectively and that had become final and no steps having

been taken by the respondent to get rid of those adverse order in any manner, a second reference on the quantum of compensation at the instance

of the respondent in LA.O.P. Nos. 113 and 112 of 1983, Sub Court, Cuddalore, was not competent. The affidavits also referred to the exchange

of correspondence between N.L.C. and the District Revenue Officer, Cuddalore, regarding the competence of the second reference and the

assurance in the letter of the District Revenue Officer dated 11-9-1985 to the effect that action is being initiated against the" person responsible for

the second reference before the Court. Referring to the stand taken by the Government in the letter dated 3-9-1985 to the effect that N.L.C. being

on interested party in the payment of compensation can always move the court for impleading itself as a party, N.L.C. prayed that in order to avert

gross miscarriage of justice by the second reference having been entertained and the compensation enhanced in the manner done by the Court

below, it should be impleaded as a party respondent in the appeals. To support the stand taken by N.L.C. in the course of the affidavits filed in

C.M.P. Nos. 16467 and 16469 of 1985, it had filed extracts from the Suit Register of the Sub Court, Vridhachalam, in O.P. Nos. 149 and 121 of

1981, besides the letters dated 28-8-1985 and 23-9-1985, addressed by N.L.C. to the Collector of South Arcot District and reply there to from

the District Revenue Officer, Cuddalore, to N.L.C.

4. We may now take up for consideration the petitions in C.M.P. Nos. 16467 and 16469 of 1985. By those applications, N.L.C. seeks to get

itself impleaded as a party respondent to these appeals so as to enable it to bring to the notice of the court that the respondent in these appeals will

be precluded from seeking and obtaining a second reference u/s 18 of the Act, as he did in LA.O.P. Nos. 113 and 112 of 1983, Sub Court,

Cuddalore, as the respondent had earlier obtained similar reference in O.P.Nos. 149 and 121 of 1981, Sub Court, Vridhachalam, which had

terminated adversely to him. The fact that at the instance of the respondent in these appeals there were earlier references in O.P.Nos. 149 and 121

of 1981, Sub Court, Vridhachalam u/s 18 of the Act is not disputed by M.R.Narayanaswami, learned Counsel appearing for the respondent in

these appeals. Nor did he dispute that on 15-6-1981 and 14-7-1981 respectively O.P. Nos. 141 and 121 of 1981 Sub Court, Vridhachalam,

were ordered to be closed as the petitioner therein place any materials before court to which the matter was referred in support of his claim for

enhanced compensation. In as much as the factum of the earlier references and their termination in the manner aforesaid had not been disputed by

learned Counsel for the respondent, we have to proceed on the footing that there were such reference u/s 18 of the Act in O.P. Nos. 149 and 121

of 1981, Sub Court, Vridhachalam, at the instance of the respondent in these appeals and they had been closed owing to the failure of the

respondent to appear and place evidence before the court. In this state of undisputed actual position regarding the making of the earlier references

to court and their termination, that could certainly be taken note of by the court, while considering the merit of the appeals and for that purpose, it

may not be necessary to implead N.L.C. as a party to these appeals, Besides one of us Ratnam,J had occasion to deal with the locus standi of

N.L.C. as the beneficiary of the pending reference u/s 18 of the Act in a batch of Civil Revision petition Neyveli Lignite Corporation Ltd., rep. By

its Secretary, Neyveli v. Special Thasildar, Land Acquisition, Neyveli-2, C.R.P. Nos. 1141 to 1341 of 1987 etc, batch, decided on 7-4-1989

and after an elaborate consideration of the provisions of the Act as well as the decisions having a bearing on that question, it had been held that the

person for whose benefit the land is acquired, under the scheme of the provisions of the Act, has no place as a party to the proceeding, either in a

reference before court u/s 18 of the Act or even in an appeal therefore. Later, a Full Bench of this Court in Neyveli Lignite Corporation Ltd., Rep.

By its Secretary, Neyveli and Ors. W.P. Nos. 9138 to 9220 and 10971 of 1986 etc. batch and L.P A. Nos. 66 to 72 of 1986 etc., decided on

28-4-1989 agreed with the decision in C.R.P. Nos. 1141 to 1341 of 1987 etc., batch Neyveli Lignite Corporation Ltd, Rep. By its Secretary,

Neyveli v. Special Thasildar, Land Acquisition, Neyveli-2 decided on 7.4.1989 and held that the limited right conferred on the beneficiary of the

acquisition proceedings is u/s 50(2) of the Act and no more. In view of these decision, N.L.C. cannot seek to be impleaded as a party to these⁴

appeals though it had brought to the notice of the court vital facts relating to prior references, which may have a bearing upon the entertainability of

the second reference by the Sub Court Cuddalore, against the adjudication in which these appeals have arisen.

5. The principal contention of learned Additional Government Pleader was that the court below was in error in proceeding to entertain the

reference in L.A.O.P. Nos. 113 and 112 of 1983 and in adjudicating upon them, as the prior references u/s 18 of the Act in O.P. Nos. 149 and

121 of 1981, Sub Court, Vridhachalam, had already been terminated adversely the award of compensation as given by the Land Acquisition

Officer and in the absence of steps taken by the respondent to set aside those orders, the reference out of which these appeals have arisen were

not competent and could not have been entertained and dealt with, as that would result in contradictory adjudications relating to the quantum of

compensation awardable to the respondent in respect of the lands acquired from him under the provision of the Act. On the otherhand, Mr.M.R.

Narayanaswami, learned Counsel for the respondent, relying upon the judgment of a Division Bench of this Court in the Special Deputy Collector,

Land Acquisition, Saidapet, Chingalpattu District v. Dhanalakshmi W.A. No. III of 1980, decided on 26-3-1980, contended that the

communication of the full text of the award is a pre-condition in order to enable the owner of the land to make up his or her mind whether a

demand for higher compensation should be made and a reference to court for that purpose should be sought for and that in the absence of the contents of the award having been made known to the owner of the acquired land at the time of the earlier references, the second reference was competent. Learned-counsel further contended that the appellant should not be permitted at all to raise this question, as it had not been raised in the course of the proceedings before the Court below and that the appellant also owned an explanation as to why a second reference was made it was also further pointed out that the earlier references had been treated as not valid by reason of the subsequent references made and under those circumstances, the order passed on the earlier references should be held to be no binding.

6. Before proceeding to consider the principal question regarding the entertainability by the Court below of the references made in LA.O.P. Nos.

Nos. 113 and 112 of 1983, Sub Court, Cuddalore, it would be desirable to briefly deal with the subsidiary contentions raised by learned Counsel

for the respondent. The reliance placed upon the decision in the Special Deputy Collector Land Acquisition, Saidapet, Chengalpattu District v.

Dhanalakshmi W.A.No 111 of 1980, decided on 26-3-1980, does not in any manner assist the respondent. In that case, the court to which the

reference was made held that it was barred by limitation and on that conclusion, it returned the reference and consequent upon such return, the

Special Deputy Collector, Land Acquisition, passed a formal order declining to make a reference on the application filed by the owner of the

acquired land.It was this order which was quashed and that was also upheld on appeal. We are of the view that decision concerned itself with an

order declining to make a reference, which was quashed. We find from the suit Register extracts in O.P. Nos. 149 and 121 of 1981, Sub Court,

Virdhachalam, that those proceedings had been presented on 10-6-1980 and 24-4-1980 and filed on 23-6-1980 and 16-10-1980 respectively in

the Sub Court, Chidambaram as O.P. Nos. 213 and 178 of 1980. Subsequently, on transfer to the Sub Court, Vridhachalam on 5-3-1981, they

had been numbered as O.P. Nos. 149 and 121 of 1981 respectively. From this, it is obvious that the respondent being dissatisfied with the award

of compensation in respect of the lands acquired from him, had already sought and obtained references to the court, viz., Sub Court at

Chidambaram and that those proceedings were later transferred to Sub Court, Vridhachalam. It is significant that it is not the case of the respondent that without knowing the contents of the award, the earlier references u/s 18 of the Act had been asked for and obtained. The respondent has not demurred to the averments contained in the affidavits filed by N.L.C. in the applications referred to earlier. In the absence of any material to indicate that the respondent did not have knowledge of the contents of the award on 10-6-1980 and 23-4-1980, when the references were presented to the Sub Court, Chidambaram, earlier, we are unable to accept the contention that the award were not then available and such nonavailability of the full text of the award at the time of the earlier references justified the second reference on the same question. We had earlier pointed out that the decision in The Special Deputy Collector Land Acquisition, Saidapet, Chingulpattu District v. Dhanalakshmi W.A. No. 111 of 1980, decided on 26-3-1980, related to the quashing of an order by the Special Deputy Collector, Land Acquisition, declining to make a reference. Such is not the situation in these appeals. We are also of the view that since at the instance of the respondent himself the earlier references had been made, it should have been only on the basis that the respondent felt aggrieved by the award of compensation in the manner done under the award; as otherwise, there was as need for him to seek references u/s 18 of the Act. We cannot, therefore, accept the contention that the contents of the award were not communicated to the respondent at the time when earlier references were made and that would justify the second reference. Equally unsustainable is the submission that the appellant should not be permitted to put forth the contention that by reason of the adjudication on the earlier references, the second reference was not competent. Indeed, the Court below ought to have, from the available records, ascertained whether there was any infirmity attached to the references made in L.A.O.P. Nos. 113 and 112 of 1983. It is true that pointed attention of the court below has not been drawn to this aspect of the matter. However, the entertainability of a second reference in the face of a final order on an adjudication of an earlier reference is a vital question and goes to the root of the matter and in view of the admitted fact of the references having been earlier made and disposed of in the manner claimed by N.L.C., it follows that the respondent in these appeals cannot

be held to be entitled to compensation in respect of the land acquired from him at two different rates. At least, with a view to enable the court to be consistent in its adjudication regarding the compensation awardable to a person deprived of his lands, the argument put forward on behalf of the appellant should be entertained and considered. We had earlier pointed out that the objection raised goes to the root of the matter and is a fundamental one and in view of the admitted fact of the earlier references and their disposal in the manner claimed by N.L.C., there is no substance in the contention that the appellant ought not to be permitted to raise such a point. The contention that the appellant ought to explain why there was a need for a second reference is also unacceptable. If at all anybody could explain, it is the respondent who can possibly set out the circumstances under which he succeeded in securing a second reference. In any event, it is seen from the letter dated 23-9-1985 addressed by the District Revenue Officer, Cuddalore, to N.L.C. that action is being initiated against the persons responsible for submission of the second reference to the Court. From this, it is obvious that a deliberate attempt has been made suppressing the earlier references and the adjudication thereon and in obtaining a second reference and as we said earlier, it is only the respondent who can throw some light relating to the circumstances under which the second reference was made. No explanation on behalf of the respondent was even attempted by learned Counsel for the respondent. We have therefore, no hesitation in rejecting the contention that the appellant ought to explain the circumstances leading to a second reference. The contention that the appellant treated the first reference and the adjudication thereon as not valid and, therefore, the order passed therein is not binding, is unacceptable. With reference to an adjudication made by court on a reference u/s 18 of the Act, there is no question of a party treating it as not valid and claiming that the order is not binding. Whether a party likes it or not, the adjudication of Court, in whatever manner it is done, is binding on him, subject, however, to such remedies in law as may be available to assail or question the same. It is difficult to accept that unilaterally a party to a proceeding, after its adjudication in a particular manner, can treat it as not valid and proceed to do something totally inconsistent with adjudication. In such cases, if a remedy is provided under the law to challenge the earlier adjudication, the party aggrieved may avail himself of

such remedies as are provided with a view to erase the effect of such an adjudication and so long as steps in that regard are not taken, there is no question of any party to such a proceeding treating the proceedings and the adjudication thereon as not valid and proclaiming that it is also not binding. We have no hesitation in rejecting this contention of the learned Counsel for the respondent.

7. It now remains to consider the question whether the second reference in L.A.O.P. Nos. 113 and 112 of 1983, Sub Court, Cuddalore, we

competent and entertainable by the Court below. It would be necessary to refer to the relevant sections of the Act. Section 18(1) of the Act,

occurring in Part III of the Act relating to Reference to Court and Procedures thereon, provides for a reference to the court at the instance of a

person interested, who has not accepted the award. Such a person may by written application to the Collector, require that matter be referred by

the Collector, for the determination of the Court relating to his objection to the measurement of the land, the amount of the compensation and

persons to whom it is payable or the apportionment of the compensation among the persons interested. Section 18(2) requires that such an

application should set out of the grounds on which objection to the award is taken. Section 19 of the Act outlines the requirements of the statement

to be made by the Collector, while making a reference for the opinion of the court. Therein, the Collector is enjoined to state the situation and

extend of the land, with particulars of any trees, building or standing crops, the names of persons whom he has reason to think are interested in

such land, the amount awarded for damages and paid or tendered u/s 5 and 17 of the Act, or either of them, and the amount of compensation

awarded u/s 11 of the Act, the amount paid or deposited under Sub-section (3A) of Section 17 of the Act and if the objection be to the amount of

the compensation, the grounds on which the amount of compensation was determined. A schedule giving particulars of notices served upon, and of

the statements in writing made or delivered by the parties interested should also be appended to the statement. After a reference is made in the

manner contemplated u/s 18 and 19 of the Act the Court, u/s 20 of the Act, to which the reference is made, should cause a notice, specifying the

day on which the court will proceed to determine the objection and directing appearance before the court on that day, to be served on the

applicant, all persons interested in the objection, except such if any of them, as have consented without protest to receive payment of the

compensation awarded and if the objection is in regard to the area of the land or to the amount of the compensation, the Collector. Section 21 of

the Act lays down the scope of the enquiry in a reference before the court and such enquiry shall be restricted to a consideration of the interests of

the persons affected by the objection. u/s 26(1) of the Act, the award passed under Part III of the Act is to be signed by the judge specifying the

amount awarded under the first clause of Sub-section (1) of Section 23 of the Act and also the amount respectively awarded under each of the

other clauses of the same Sub-section together with the grounds for awarding each of the said amounts. Every such award, u/s 26(2) of the Act, is

deemed to be a decree and the statement of the grounds of every such award, a judgment within the meaning of Section 2(2) and 2(9), C.P.C.

Section 53 of the Act enacts that except to the extent to which the provisions of the CPC may be inconsistent with anything contained in the Act,

its provisions shall apply to all proceedings before the Court under the Act. Section. 141, C.P.C. provides that the procedure in regard to suits

shall be followed, as far as it can be made applicable, in all proceedings in any court of civil jurisdiction. It is in the background of the aforesaid

resume of the important provisions of the Act and C.P.C. that the enter-tainability of the second reference has to be considered.

8. The precise nature of a reference u/s 18 of the Act to the Court has been the subject-matter of considerations in several decisions with reference

to procedural aspects and the view has been consistently held that when a reference is made to a civil court, the claimant has to be regarded as the

plaintiff and the Government as defendant. We may now refer in this connection to *Ezra v. The Secretary of State* ILR 30 Cal. 36 where, amongst

other questions, the precise nature of a reference u/s 18 of the Act before the Court came up for decision. It was held that when a reference is

made to a civil court, the claimant has to be regarded as the plaintiff and the Government as the defendant and this is the invariable practice. This

decision was affirmed by the Privy Council in *Ezra v. Secretary of State of India* ILR 32 Cal. 605. Again, In *re Land Acquisition Act-In re*

Rustomji Jijabai ILR 30 Bom.341, the question arose whether the claimant is confined to the grounds set forth in his application to the Collector it

was held referring to Section 53 of the Act that the written application to the Collector tantamounts to a plaint and that there is nothing in the provisions of the Act taking away from a claimant the right he has according to Section 53 of the Act to invoke, the said of Section 147 of the Code of Civil Procedure. It was further pointed out that after the Collector has made a reference, the court has to deal with the matter in accordance with Section 23 and 24 of the Act and the provisions of the Code of Civil Procedure, so far as they are applicable. Essentially, therefore, a reference when made is a civil proceeding governed by the 53 of the Act, as there is nothing inconsistent with the provisions of the Act with reference to the applicability of the provision of the CPC to the reference before Court. It is this aspect that has again been emphasised by the Division Bench of this Court in Eggappa Gounder v. Special Tahsildar (Land Acquisition), Madras 98 L.W. 56 where it has been observed as follows:

It is well settled that the burden of proof is generally on the claimants objectors to substantiate their objection as to compensation and that in proceedings u/s 18, it is the objectors who have to lend evidence to show that compensation awarded was not fair and adequate. Section 53 of the Land Acquisition Act provides that the provisions of the CPC are applicable to proceedings before the Court of reference and so when a reference u/s 18 is made on the ground of valuation the proceedings take the colour of the suit, the claimants figuring as plaintiffs in the action and the Government or the acquiring officer as the defendant.

P.N. Bhagwati, J.(as to then was) in Alihusain Abbahbai and Others Vs. Collector, Panch Mahats, had to consider the jurisdiction and the powers of a Court while dealing with a reference u/s 18 of the Act in the context of the applicability of Order 22, Rule 3, C.P.C. to a reference u/s 18 of the Act before Court. Considering the nature of such a proceeding, it was pointed out that a reference is not different from an ordinary civil proceeding in which the applicant, who is in the position of a plaintiff, objects to the amount of compensation in the award of the Collector and claims additional compensation and that if the applicant fails to appear at the hearing of the reference, the reference must, by force of Order 9, Rule 8, C.P.C. which is made applicable by Section 53 of the Act, be dismissed for

want of appearance like any other civil proceeding and in the same way if the applicant does not produce evidence in support of the objection, the reference must be dismissed just as any other civil proceeding would be dismissed for want of evidence in support of the claim and when the reference is dismissed the award of the Collector stands. It was also further pointed out that the reference u/s 18 of the Act is the objection of the applicant to the award, which is to be determined by the court on the evidence before it, but if no evidence is let in by the applicant in support of the objection and the Collector also does not lend any evidence in justification of the award, the objection would be dismissed by the court and the reference would be dismissed by the court, in which case, there can be no question of the court making an award, for, there being no evidence before court as to the value of the land, it would not be possible for the Court to make its own award and in the absence of the evidence, the court cannot proceed to make an award but would be obliged to reject the objection as unsupported by evidence. Further, it had also been laid down that if the applicant fails to appear at the hearing of the reference, the reference would be dismissed for default of appearance under Order 9, Rule 8, C.P.C. as applied by Section 53 of the Act and it is difficult to see how the Court can in the absence of the applicant proceed to determine his objection on merits, unless of course the Collector chooses to lend evidence for the purpose of satisfying the court that the amount of compensation determined in the award of the Collector is the proper amount of compensation for the land, though there is no obligation cast on the Collector to do so, and that the nature of the reference u/s 18 of the Act is not such that it must necessarily or inevitably result in the making of an award by the court determining the amount of compensation for the land. The Karnataka High Court in Pullamma v. Additional Special Land Acquisition Officer AIR 1977 Karna.9 considered the question of the maintainability of an application for restoration of a reference dismissed for default. While holding that such an application is maintainable, reference was made to the following observations of Ashutosh Mookerjee, J. in Bhandi Singh v. Ramadhin Roy (1906) 10 Cal. W.N. 991:

The learned vakil for the Appellant, has, however, strenuously endeavoured to take the present case out of the principle deducible from the

decisions just referred to, and he has principally relied upon the circumstance that in the present instance the reference to the court u/s 18 proved

ineffectual, because the proceedings were dismissed for want of prosecution and there was no adjudication on the merits. This circumstance,

however, appears to me to be wholly immaterial. u/s 53 of the Act I of 1894 all the provisions of the CPC are made applicable to proceeding

before the court, under the Act, except in cases where there may be any inconsistency. It is clear, therefore, that Section 647, Civil Procedure

Code, is applicable to proceedings before the Land Acquisition judge and consequently the provisions of Section 102 and 103 are also applicable.

It has been ingeniously suggested however by the learned vakil for the Appellant that Section 102 by its very terms is inapplicable because it

speaks of a suit in which there is a plaintiff and a defendant, whereas in a proceeding upon a reference to the court u/s 18, there is no plaintiff or

defendant. This argument is obviously fallacious. The party at those instance the reference is made u/s 18 is virtually the plaintiff and if the objection

relates to the measurement of the land and the amount of the compensation, the Collector is the defendant, whereas if the question is as to the

persons to whom the compensation is payable or its apportionment, the person who disputes the claim of the plaintiff, substantially occupied the

position of the defendant. When therefore a reference was made u/s 18 at the instance of some of the present appellants and they did not appear at

the time the case was taken up for adjudication it must be assumed to have been rightly dismissed u/s 102, Civil Procedure Code, and they are

precluded by Section 102, CPC from bringing a fresh suit upon the same cause of action.

It was also noticed that the Act is silent as to what should be done when a party to a reference absents himself and that there is no prohibition in

the Act for passing an order for dismissal, as such a course is permitted by the provisions of the Code of Civil Procedure, which are made

applicable u/s 53 of the Act and by Section 141, C.P.C., the provisions relating to suits would apply, as far as it can be made applicable, in all

proceedings in any court of civil jurisdiction, inclusive of the reference u/s 18 of the Act. Finally, it was held that the application for setting aside the

order of dismissal of a reference for default was maintainable. A full Bench of the Delhi High Court in Ram Piari v. Union of India AIR 1978 Del.

129 dealt with the applicability of Order 22, Rules 3 and 9, C.P.C. in a pending reference u/s 18 of the Act. The Full Bench observed at page 135

as follows:

A combined reading of Sections 18 to 26 of the Act, noted above, does not show that any obligation is cast on the Court to make an award on the

failure of the applicant, at whose instance reference is made, to adduce evidence to challenge the quantum of compensation offered to him by the

Collector or lay a challenge that the measurement taken by the Collector in respect of the land or property acquired was not properly made. In

such a case the court is not to embark upon an enquiry on its own volition nor it is the duty of the Collector to adduce evidence before the court to

justify the award made by him. On a party laying challenge to the award made by the Collector, retreating from the reference during the

proceedings before the court, no obligation is cast on the court to make an award.

As noted earlier Section 21 of the Act restricted the scope of the enquiry to a consideration of the interests of the persons to whose behest the

Collector makes the reference on their applying to the Collector to make the reference. That being so, it is incumbent on them to pursue their claim

as provided under the Act. In the event of the death of a person at whose instance the reference was made, the right to continue the reference

survives to his legal representatives. It is for the legal representatives if they chose to pursue the reference to apply to the court for being brought on

the record to enable them to prosecute the reference. No obligation is cast on the Collector to furnish the name and addresses of the legal

representatives of a deceased claimant to keep the reference alive. The reference is to be answered and an award given by the Court only on

evidence being produced before it by the claimant, who challenges the award given by the Collector. If no evidence is led, the reference has to be

declined. The provisions of the Act do not cast any obligation on the Collector to justify his award. It is only when a claimant produces evidence

before the Court and succeeds in showing that the award made by the Collector is inadequate that the Collector is to lead evidence in rebuttal. The

Act itself does not prescribe the procedure applicable to the proceedings before the Court while hearing a reference application. Section 53 of the

Act, however, makes the provisions of the Code applicable to these proceedings.

Accordingly the procedure laid down in the Code has to be followed by the Court in deciding a reference application. The procedure laid down in the Code being applicable to these proceedings, it cannot be urged that the applicability of the provisions of Order 9 and Order 22 of the Code are not attracted to the proceedings in the court.

...It is no doubt true that a reference application is not a suit, however because of the applicability of the procedure prescribed in the Code to the proceeding before the court in such applications, the proceedings before the Court partake the nature of a suit. During the proceedings before the court in the reference application, the claimant will partake the status of plaintiffs while, the non-claimants and Collector would occupy the position of defendants.

From the principles laid down in the aforesaid decisions, it follows that by reason of Section 53 of the Act and Section 141, C.P.C., the provisions of the Code of Civil Procedure, in so far as they are not inconsistent with the provisions of the Act would apply to reference proceedings, whether such proceedings in a Court of civil jurisdiction. That would mean that the applicability of Order 9, Rules 8 and 9, C.P.C. would also stand attracted to references u/s 18 of the Act pending before Court. In these appeals, it is seen from the suit Register extracts pertaining to O.P.Nos.

149 and 121 of 1981, Sub Court, Vridhachalam, that the references had been secured by the respondent herein on the ground that the award of compensation at the rate of Rs. 7,000 per acre was low and that enhanced compensation at the rate of Rs. 10,000 and Rs. 15,000 per acre respectively should be paid. The reference to court u/s 18 of the Act were thus made at the instance of the respondent and it is seen from the entries in columns 6 and 7 of the Suit register extracts that though the respondent had been served with notice in O.P. Nos. 149 and 121 of 1981, he had not chosen to appear before Court and place evidence in support of his claim for higher compensation agitated by him in the references u/s 18 of the Act, as a result of which on 15-6-1981 and 14-7-1981 respectively, the proceedings in O.P. Nos. 149 and 121 of 1981 were closed owing to the default of the respondent in appearing before the Court and placing evidence before it to substantiate his claim for payment of enhanced compensation. The disposal of the references in the manner aforesaid

would clearly fall under Order 9, Rule 8, C.P.C. and in such an event, under Order 9, Rule 9(1), C.P.C. the respondent will be precluded from bringing another proceeding in respect of the same claim, though he may be entitled to apply to have the dismissal order set aside, subject to his satisfying the Court that there was sufficient cause for his non-appearance, when the matter was called on for hearing. It is not disputed that the respondent in these appeals had not taken any step whatever till this day to have the earlier reference restored. We may also point out that the situation created by the adjudication in the prior and subsequent proceedings is somewhat unusual in that according to the former, the respondent would be entitled to be paid only Rs. 7,000 per acre as compensation, while according to the latter, the respondent would be entitled to be paid compensation at the rate of Rs. 65,000 per acre. There cannot, therefore, be the matter of payment of compensation to the respondent in these appeals and considering the fact that there were prior references u/s 18 of the Act in O.P.Nos.149 and 121 of 1981, Sub Court, Vridhachalam, which were terminated or even rejected for their non-prosecution by the respondent under Order 9, Rules 8, C.P.C. it follows that by virtue of the provisions of Order 9, Rules 9(1), C.P.C., the references in LA.O.P. Nos. 113 and 112 of 1983, Sub Court, Cuddalore, out of which these appeals have arisen, could not have again been made u/s 18 of the Act and also entertained by the Court below,. Though learned Counsel for the respondent attempted to justify the award of compensation in the manner done by the Court below by referring us to the evidence, we refrain from dealing with the matter on merits, as we have earlier held that the references in LA.O.P. Nos. 113 and 112 of 1983 were incompetent in the face of the order passed on the earlier references in O.P. Nos. 149 and 121 of 1981, Sub Court Virdhachalam.

9. The appeals are, therefore, allowed and the judgment and decree of the court below in LA.O.P.Nos. 113 and 112 of 1983 are set aside and they will stand dismissed, with costs throughout.

10. In as much as the facts relating to the earlier references and the adjudication thereon sought to be brought to the notice of the court by N.L.C. in its applications in C.M.P. Nos. 16467 and 16469 of 1985 has been admitted by the respondent and in view of the decision in Neyveli Lignite

Corporation Ltd., represented by its Secretary, Neyveli v. Special Tahsildar, Land Acquisition, Neyveli-2 C.R.P. Nos. 1141 to 1341 of 1987 etc.

batch, decided on 7-4-1989 and Neyveli, Lignite Corporation Ltd., represented by its Secretary, Neyveli v. Rangaswamy and Ors. and P.R.

Ramlingam v. Neyveli Lignite Corporation Ltd., represented by its Secretary, Neyveli, and Ors. W.P. Nos. 9138 to 9220 and 10971 of 1986 etc.

batch and L.P.A. Nos. 66 to 72 Of 1986 etc., decided on 28-4-1989, there is no need to implead N.L.C. as a party to these appeals.

C.M.P.Nos. 16467 and 16469 of 1985 will, therefore, stand dismissed. No cost. However, the copies of the Suit Register extracts in O.P. Nos.

149 and 121 of 1981, Sub Court, Vridhachalam, and the letters dated 28-8-1985 and 23-9-1985 referred to in the affidavits and filed on behalf

of N.L.C. will be marked as additional evidence in these appeals as Exhibits as B-5 to B-8 under Order 41, Rule 27(1)(b), C.P.C. as these

documents are necessary and required by this Court to consider and pronounce judgment on the main question of competence of the second

reference. Additional documents marked in appeal on the side of the Appellant (Respondent before the Court below):

B-5 Xerox copy of the Suit Register in O.P. No. 149 of 1981, Sub Court, Vridhachalam.

B-6 Xerox copy of the Suit Register in O.P. No. 121 of 1981, Sub Court, Vridhachalam.

B-728-8-1985 True copy of the letter addressed by the Office of the Director, personnel Corporate Office, Neyveli to the Collector of South

Arcot, Cuddalore.

B-823-9-1985 True copy of the letter addressed by the District Revenue Officer, South Arcot District, Cuddalore, to the Director (Personnel)

Neyveli Lignite Corporation Ltd., Neyveli-1.